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INTERSTATE COMMERCE COMMISSION

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LEASE OF RAILROAD EQUIPMENT

Dated as of November 1, 1975

Between

CONNELL LEASING, INC.

and

NORTH LOUISIANA & GULF RAILROAD COMPANY

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LEASE OF RAILROAD EQUIPMENT dated as of November 1, 1975, between CONNELL LEASING, INC., a New Jersey corporation (hereinafter called the Lessor), and NORTH LOUISIANA & GULF RAILROAD COMPANY, a Louisiana corporation (hereinafter called the Lessee).

WHEREAS the Lessee has assigned to the Lessor, pursuant to an Assignment of Purchase Agreement dated as of the date hereof (hereinafter called the Assignment), certain of its interests in a Purchase Agreement dated as of November 1, 1975 (hereinafter called the Purchase Agreement), between the Lessee and GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Builder);

WHEREAS the Lessor has accepted the Assignment and proposes to purchase from the Builder such units of railroad equipment described in Schedule A hereto (hereinafter called the Units) as are delivered and accepted under the terms of this Lease;

WHEREAS the Lessee desires to lease from the Lessor such number of Units as are so delivered and accepted hereunder, at the rentals and upon the terms and conditions hereinafter provided;

WHEREAS Continental Can Company, Inc., a New York corporation (hereinafter called the Guarantor), has agreed to guarantee to the Lessor, as provided in a Guaranty Agreement dated as of the date hereof (hereinafter called the Guaranty Agreement) with the Lessor, the due and punctual payment of the sums payable by and the due and punctual performance of the obligations of, the Lessee under this Lease;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and, except as herein provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past,

present or future claims of the Lessee against the Lessor under this Lease or the Builder or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever; provided, however, that the Lessee shall not be foreclosed from exercising such other legal rights and remedies as it may have against the Lessor.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of each of the Units. The Lessee will cause its agent or an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to execute and deliver to the Lessor a certificate of acceptance (hereinafter called a Certificate of Acceptance), stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The Lessor will cause

each Unit to be delivered to the Lessee at the point or points specified in Schedule A hereto. Units shall not be delivered to or accepted by the Lessee subsequent to July 15, 1976, and the Lessor shall reassign to the Lessee on July 16, 1976, its rights to purchase any remaining balance of Units, under the Assignment, not delivered and accepted as herein provided prior to July 16, 1976.

§ 3. Rentals. (a) With respect to each Unit delivered and accepted hereunder prior to January 1, 1976, the Lessee agrees to pay to the Lessor, as rental for each such Unit subject to this Lease, (i) an initial instalment of rent payable on January 5, 1976, and (ii) 30 consecutive semiannual instalments payable on January 5 and July 5 in each year, commencing July 5, 1976. The initial instalment of such rent shall be in an amount equal to .03278% of the Purchase Price (as hereinafter defined) of each such Unit for each day which such Unit is subject to this Lease, commencing with the date of acceptance pursuant to the terms of this Lease, and the 30 consecutive semiannual rental instalments, payable in arrears, shall be each in an amount equal to 5.8995% of the Purchase Price of each Unit then subject to this Lease.

(b) With respect to each Unit delivered and accepted hereunder on or after January 1, 1976, the Lessee agrees to pay to the Lessor, as rental for each such Unit subject to this Lease, (i) an initial instalment of rent payable on the date of settlement for the final Unit settled for as Assigned Equipment under the Purchase Agreement and the Assignment and (ii) 30 consecutive semiannual instalments payable on the semiannual anniversaries of such settlement date, or, if there shall be no corresponding date in the month of such anniversary, on the last day of such anniversary month, in each year, commencing with the first succeeding six-month anniversary of such settlement date. The initial instalment of such rent shall be in an amount equal to .03278% of the Purchase Price of each such Unit for each day which such Unit is subject to this Lease, commencing with the date of acceptance pursuant to the terms of this Lease, and the 30 consecutive semiannual rental instalments, payable in arrears, shall be each in an amount equal to 6.09760% of the Purchase Price of each Unit then subject to this Lease.

For purposes of this Lease, Purchase Price shall mean, with respect to Units, the base price per Unit as set

forth in Schedule A hereto, which base price is subject to such increase or decrease as may be agreed upon by the Builder, the Lessor and the Lessee.

If any of the rental payment dates referred to above is not a business day, the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and all other days on which banking organizations in New York, New York, are authorized or obligated to remain closed.

The Lessor hereby instructs the Lessee to make all the payments provided for in this Lease directly to it at such address as shall from time to time be specified in writing by the Lessor. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of acceptance of such Unit hereunder and, subject to the provisions of §§ 6, 7, 9, 10, 13 and 17 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Owned by Connell Leasing, Inc." or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to and property in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and filed, recorded and deposited by the Lessee in all public

offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished Lessor an opinion of counsel to the effect set forth in subparagraph (b)(i) of § 15 hereof in respect of such statement.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes or foreign withholdings (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured solely by net income based on such receipts, or gross receipts taxes [other than gross receipts in the nature of sales or use taxes], up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other taxing jurisdiction, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or registration, documentation and license fees, assessments, duties, charges, fines or penalties (all such expenses, taxes, withholdings, registration, documentation and license fees, assessments, duties, charges, fines and penalties being hereinafter called impositions) hereafter levied, imposed or assessed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein, and from and against which the Lessee agrees to indemnify, protect, defend, save and keep harmless the Lessor on an after-tax basis. The Lessee will also pay promptly all impositions which may be levied, imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every

part of such unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such unit; provided, however, that the Lessee shall be under no obligation to pay any imposition of any kind so long as it is contesting in good faith and by appropriate legal proceedings such imposition and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor with interest thereon at a rate equal to the prime rate charged in New York, New York, by First National City Bank, New York, New York, to its most creditworthy corporate borrowers. The obligations of the Lessee to pay all impositions shall be deemed a rental obligation.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interest of the Lessor in such units or notify the Lessor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor, provided, however, that if the Lessee is not permitted to make such reports on behalf of the Lessor, it will so notify the Lessor and will furnish to the Lessor all information necessary for the Lessor to make such reports.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action or failure to act by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence, satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The representations, indemnities and agreements of the Lessee provided for herein, including without limitation §§ 6, 9 and 17 hereof, and the Lessee's obligation thereunder, shall survive the expiration or other termination of this Lease and are expressly made for the benefit of, and shall be enforceable by the Lessor.

§ 7. Maintenance; Payment for Casualty Occurrences; Termination Upon Units Becoming Obsolete or Surplus; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition.

In the event that during the term of this Lease or until such Unit shall have been returned pursuant to § 14 hereof, any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee or the Lessor, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise under authority of law and such taking or requisition shall have exceeded 120 days or shall extend beyond the term of this Lease (such occurrences being hereinafter called Casualty Occurrences), the Lessee shall promptly and fully notify the Lessor with respect thereto. On the rental payment date next succeeding such notice or, within 60 days if such Unit is being returned under § 14 hereof, the Lessee shall pay to the Lessor an amount equal to the accrued rental in respect of such Unit to and including the date payment is due pursuant to this sentence plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date such payment is due, if payment is due on a rental payment date, and as of the next preceding rental payment date if payment is not due on a rental payment date, in each case in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue and the term of this Lease as to such Unit shall terminate. The Lessor shall, after payment by the Lessee of a sum equal to the Casualty Value of any Unit which shall have suffered a Casualty Occurrence, and any other amounts then due hereunder, execute and deliver to the Lessee a bill of sale (without warranties) for each Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Lessor. In the event that any Unit is taken or requisitioned under authority of law as set forth in the first sentence of this paragraph but such taking does not exceed 120 days nor extend beyond the end of the term of this Lease, the Lessee shall notify



the Lessor of such taking or requisition and all of the Lessee's obligations under this Lease with respect to such Unit, including, but not limited to, rental with respect thereto pursuant to § 3 hereof, shall continue as if such taking or requisition had not occurred. All payments received by the Lessor or the Lessee in respect of such taking or requisition for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee.

With respect to Units delivered and accepted hereunder prior to January 1, 1976, the Casualty Value of each Unit as of any rental payment date or such other date on which such Casualty Value is payable shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such rental payment date or such other date:

<u>Date</u>	<u>Percentage</u>	<u>Date</u>	<u>Percentage</u>
January 5, 1976	106.1937	January 5, 1984	76.3234
July 5, 1976	105.7079	July 5, 1984	73.0699
January 5, 1977	105.0122	January 5, 1985	69.6877
July 5, 1977	104.1175	July 5, 1985	66.1639
January 5, 1978	103.0311	January 5, 1986	62.5226
July 5, 1978	101.7567	July 5, 1986	58.7486
January 5, 1979	100.2981	January 5, 1987	54.8691
July 5, 1979	98.6567	July 5, 1987	50.8665
January 5, 1980	96.8391	January 5, 1988	46.7711
July 5, 1980	94.8441	July 5, 1988	42.5603
January 5, 1981	92.6816	January 5, 1989	38.2615
July 5, 1981	90.3477	July 5, 1989	33.8481
January 5, 1982	87.8551	January 5, 1990	29.3429
July 5, 1982	85.1977	July 5, 1990	24.7193
January 5, 1983	82.3912	January 5, 1991	20.0000
July 5, 1983	79.4269		

Casualty Values with respect to each Unit delivered and accepted hereunder on or after January 1, 1976, will be set forth in a supplemental schedule. Such Casualty Values will be computed on the basis of the assumptions used by the Lessor in originally analyzing this transaction.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will procure and maintain at its sole cost and expense at all times during the continuance of this Lease (and thereafter so long as any Unit is at the risk of the Lessee), insurance coverage for comprehensive general liability (including contractual liability with respect to the "hold harmless" or indemnification agreement between the Lessee and the Lessor contained in § 9 hereof), physical damage, theft, fire with extended coverage and any other insurance as may be reasonably required by the Lessor for the benefit of the Lessor as its interests appear, in amounts, against risks, in form and with insurance companies or underwriters as shall be satisfactory to the Lessor from time to time and shall deliver to the Lessor a certificate of the issuer of such insurance coverage setting forth a description of the terms thereof; provided, however, Lessee shall not be required to maintain physical damage, theft, or fire with extended coverage insurance in an amount in excess of the applicable Casualty Value of the Units and provided, further, however, that the comprehensive general liability insurance may contain a \$2,500 deductible provision per occurrence and the physical damage, theft, fire with extended coverage insurance may contain a \$2,500 deductible provision per occurrence. Without limiting the foregoing, each insurance policy shall provide that it will not be invalidated as against the Lessor because of any violation of a condition or warranty of the policy or application therefor by the Lessee and that it may be altered or cancelled by the insurer only after not less than 30 days advance written notice to, and that losses in excess of \$2,500 shall be adjusted only with the consent of the Lessor or its assigns. All liability policies shall name the Lessor as an insured person. All policies covering loss or damage to the Units shall provide that payment thereunder for any such loss or damage shall be made to the Lessor and the Lessee as their interests may appear. If the Lessee shall fail to provide and furnish any of said insurance, the Lessor may, after reasonable notice to Lessee and a reasonable opportunity, under the circumstances, to correct or provide such insurance procure such insurance and the Lessee shall, upon demand, reimburse the Lessor for all outlays for such insurance with interest thereon computed at the rate of 12% per annum or such lesser maximum rate as is permitted by applicable law. The Lessee may provide for any such insurance under blanket insurance policies maintained by the Lessee with respect to other properties owned or leased by it, so long as the policies are of an "all risk" type.

Any insurance proceeds as the result of insurance carried by the Lessee or condemnation payments received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7. If the Lessor shall receive any such insurance proceeds or condemnation payments which are in excess of the Casualty Value, any such insurance proceeds shall be paid to the Lessee and any such excess condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports. On or before March 31 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Lessor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. The Lessor shall have the rights by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this lease.

The Lessee will furnish to the Lessor, as to itself and the Guarantor, balance sheets (on a consolidated basis in the case of the Guarantor) as of the end of each fiscal year and profit and loss statements (on a consolidated basis in the case of the Guarantor) for the year then ended prepared in conformity with generally accepted accounting principles of the applicable regulatory authorities, applied on a basis consistent with that of the preceding fiscal year and reported thereon by the Lessee's or the Guarantor's, as appropriate, independent certified public accountants. The foregoing

financial documents shall be delivered to the Lessor at the time annual financial reports of the Guarantor are required to be submitted to the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. The Lessee shall also furnish to the Lessor unaudited quarterly reports of similar tenor for the Guarantor only within 90 days after the end of each respective quarterly accounting period and such other financial information as the Lessor may reasonably request from time to time.

Each set of financial documents delivered to the Lessor shall be accompanied by a certificate (correctly dated the date of delivery) of the President of the Lessee confirming that as at the date of such certificate no Event of Default as defined herein has occurred and is continuing, or if any such Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action the Lessee has taken or proposes to take with respect thereto.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Articles 9 and 10 of the Purchase Agreement. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including without limitation,

with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor under this Lease.

The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee pursuant to the preceding sentence shall be owned by the Lessee.

The Lessor (which term as used herein shall include the Lessor's successors, assigns, agents and servants) shall have no responsibility or liability to the Lessee, its successors or assigns, or to any other person, with respect to any or all liabilities (as "liabilities" is hereinafter defined), and the Lessee hereby assumes liability for, and hereby agrees, at its own cost and expense, to indemnify, protect, defend, save and keep harmless the Lessor from and against, any and all liabilities, other than the Lessor's obligation to pay to the Builder and the Lessee, as the case may be, the Purchase Price for all Units delivered and accepted in accordance with the terms hereof. The term "liabilities" as used herein shall include any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable legal fees and expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against the Lessor, in any way relating to or arising out of this Lease, the Purchase Agreement, the Assignment or the manufacture, purchase, acceptance, ownership, transporting, delivery, leasing, possession, control, use, operation, condition, testing, servicing, maintenance, repair, improvement,

replacement, storage, sale, return or other disposition of the Units (including, without limitation, (a) any inadequacy or deficiency or defect therein, including latent defects, whether or not discoverable by the Lessor or the Lessee, or any claim for patent, trademark or copyright infringement, (b) any accident in connection therewith resulting in damage to property or injury or death to any person, including but not limited to, employees and agents of the Lessee, (c) any strict liability in tort and (d) any interruption of service, loss of business or consequential damages resulting therefrom). The Lessee agrees to give the Lessor and the Lessor agrees to give the Lessee prompt written notice of any of the liabilities hereby indemnified against. The Lessee's obligations under this paragraph shall be those of a primary obligor whether or not the Lessor is also indemnified with respect to the same matter by any other person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease and the expiration or termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax, gross receipts tax, or gross income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

(a) default shall be made in payment of any part of the rental provided in § 3 hereof, and such default shall continue for 10 days after giving of written notice thereof by the Lessor;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, and such default shall continue for 20 days

after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

(d) any representation or warranty made by the Lessee in this Lease or in any document or certificate furnished the Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect and such condition shall continue unremedied for a period of 15 days after written notice thereof by the Lessor to the Lessee specifying the default and demanding that the same be remedied;

(e) the Lessee or the Guarantor shall consent to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property (the term "substantial part of its property" with reference to property of the Guarantor meaning, for the purposes of this clause (e) and clauses (f) and (g) hereof, property having an aggregate fair market value constituting at least 10% of the fair market value of the Guarantor's total consolidated assets), or the Lessee or the Guarantor shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors, or the Lessee or the Guarantor shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereinafter in effect) or an answer admitting the material allegations of a petition filed against the Lessee or the Guarantor in any such proceeding, or the Lessee or the Guarantor shall by voluntary petition, answer or consent seek relief under the provisions of any other bankruptcy or other similar law (other than a law which does not provide for or permit any readjustment or alteration of the Lessee's obligations hereunder), as now or hereafter in effect, providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors;

(f) an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent of the Lessee or the Guarantor, as appropriate, a receiver, trustee or liquidator of the Lessee or of any substantial part of its property, or any substantial part of the property of the Lessee or the

Guarantor shall be sequestered, or any creditor of the Lessee or the Guarantor shall commence to foreclose a lien, charge or other encumbrance against any Unit, and any such order, judgment or decree of appointment or sequestration or foreclosure action shall remain in force undismissed, unstayed and unvacated for a period of 60 days after the date of entry thereof; or

(g) a petition against the Lessee or the Guarantor in a proceeding under the Federal bankruptcy laws or other insolvency laws (other than a law which does not provide for or permit any readjustment or alteration of the Lessee's obligations hereunder), as now or hereafter in effect, shall be filed and shall not be withdrawn or dismissed within 60 days thereafter, or if, under the provisions of any law (other than a law which does not provide for or permit any readjustment or alteration of the Lessee's obligations hereunder), as now or hereafter in effect, providing for reorganization or winding-up of corporations which may apply to the Lessee or the Guarantor, any court of competent jurisdiction shall assume jurisdiction, custody or control of the Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 60 days;

then, in any such case, the Lessor, at its option, may:

(i) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including without limitation net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as provided in this clause (ii); and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of such Units may be and take possession of all or any of the Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free



from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 10% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; provided, however, that if the Lessee shall dispute the estimate of the Lessor under this clause (A) within 10 days after delivery to it of a written notice thereof, then such value shall be determined by an Appraiser (as defined in § 13 hereof) plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return (computed in accordance with the assumptions utilized by the Lessor in estimating its net return upon entering into this Lease, as such assumptions are set forth in § 17 hereof) and that would have been available to the Lessor if it had been entitled to utilization of all or such portion

of the ADR Deduction (as such deduction is defined in § 17 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that if the Lessee shall dispute the estimate of the Lessor under this clause (y) within 10 days after delivery to it of a written notice thereof, then such value shall be determined by an Appraiser; and provided, further, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (B) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including without limitation all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall upon notice from the Lessor forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) transport or cause the Units to be transported to such point or points as the Lessor may reasonably designate;

(b) place such Units upon such storage tracks as the Lessor reasonably may designate; and

(c) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor, using its best efforts to so dispose thereof expeditiously.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and

risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable to any person in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively).

This Lease and the Lessee's right and interest herein, and in the options to renew this Lease and in the right of first refusal to purchase the Units as herein provided, shall be completely prior to each and every deed of trust or mortgage or other security instrument and each such instrument, whether heretofore, now or hereafter in existence shall in all respects be subject and subordinate to this Lease and the Lessee's right and interest herein and in such renewals, rights, obligations and options.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the

Lessor, which consent shall not be unreasonably withheld, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them, except as herein provided and except that the Lessee shall have the right to assign this Lease to the Guarantor or any affiliate thereof without the consent of the Lessor. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or resulting from claims against the Lessor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units.

§ 13. Renewal Option, Right of First Refusal.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or the extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all or any one or more of the Units then covered by this Lease, for two additional two-year periods commencing on the scheduled expiration of the original term or the extended term of this Lease, as the case may be, provided that no such extended term extends beyond January 15, 1995, with quarterly rental payments equal to the Fair Market Rental Value of, as hereinafter defined, each such Unit then subject to this Lease for such renewal period, payable in arrears, on January 15, April 15, July 15 and October 15 in each year of such extended term.

Fair Market Rental Value for the purposes of this § 13 shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee-user (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, the cost of removal from the location of current use shall not be a reduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree

upon a determination of the Fair Market Rental Value of the Units for the purposes of this § 13 such value shall be determined in accordance with the appropriate foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne equally by the Lessee and the Lessor.

The Lessor agrees that during the period ending six months prior to the last day of the original term or any extended term of this Lease (provided no Event of Default hereunder shall have occurred and be continuing) it will not sell the Units, or any of them, unless the Lessor shall have given the Lessee at least 30 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase such Unit or Units at the same price and on the same terms as specified in such notice. Such opportunity of the Lessee shall continue for a period of 20 business days, commencing on the date it receives such notice from the Lessor. Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for each Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term.

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks

for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on lines of railroad, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application of any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction.

§ 15. Representations and Warranties; Opinions of Counsel. (a) The Lessee represents and warrants for the benefit of the Lessor that:

(i) the Lessee and the Guarantor are corporations duly organized and validly existing in good standing under the laws of their states of incorporation and are duly qualified and authorized to do business wherever necessary to carry on their present businesses and operations and to own their properties and to perform their obligations under this Lease, the Purchase Agreement, the Assignment and the Guaranty Agreement, as the case may be;

(ii) the Lessee and the Guarantor have the full power, authority and legal right to enter into and perform their obligations under this Lease, the Purchase Agreement, the Assignment and the Guaranty Agreement, as

the case may be, and the execution, delivery and performance of this Lease, the Purchase Agreement, the Assignment and the Guaranty Agreement, as the case may be, have been duly authorized by all necessary corporate action on the part of the Lessee and the Guarantor;

(iii) neither the Lessee nor the Guarantor is a party to any agreement or instrument or subject to any charter or other corporate restriction which will materially adversely affect its ability to perform its obligations under this Lease, the Purchase Agreement, the Assignment or the Guaranty Agreement, as the case may be;

(iv) neither the execution and delivery of this Lease, the Purchase Agreement, the Assignment or the Guaranty Agreement nor the consummation of the transaction herein or therein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality, or of the corporate charter or the by-laws of the Lessee or the Guarantor or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee or the Guarantor is now a party or by which it may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder;

(v) no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interest therein of the Lessee or the Guarantor, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such liens may attach to the leasehold interest of the Lessee hereunder in and to the Units;

(vi) no authorization or approval is required from any governmental or public body with respect to the entering into or performance by the Lessee of this Lease, the Purchase Agreement or the Assignment or by the Guarantor of the Guaranty Agreement;

(vii) this Lease, the Purchase Agreement, the Assignment and the Guaranty Agreement have been duly autho-



rized, executed and delivered by the Lessee and the Guarantor, as the case may be, and, assuming due authorization, execution and delivery thereof by the other parties thereto, are legal, valid and binding agreements, enforceable in accordance with their terms; subject as to the enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally;

(viii) on or prior to the First Delivery Date (as defined in clause (b) hereof) this Lease, the Purchase Agreement and the Assignment shall have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Lessor's interest in and to the Units and any filing, recording or deposit (or giving of notice) with any other federal, state or local government or agency which is necessary in order to protect the interests of the Lessor in and to the Units in the United States of America shall have been performed;

(ix) at the time of the delivery and acceptance of the Units under this Lease, no material adverse change had occurred in the financial condition of the Lessee or the Guarantor since June 30, 1975; and

(x) the financial statements contained in the Railroad Annual Report Form R-1 (or Form A, as the case may be) of the Lessee for the three fiscal years ended December 31, 1974, correctly set forth the financial condition of the Lessee as of the dates and the results of operations thereof for the periods covered thereby and the Lessee has furnished the Lessor with copies of such financial statements.

(b) The obligations of the parties hereto to enter into a lease pursuant hereto of the Units shall be subject to the receipt by each such party on or prior to the first date of delivery of any Unit pursuant to the Purchase Agreement and the Assignment (such date being herein called the First Delivery Date) of the following documents, each dated the First Delivery Date:

(i) the written opinion of counsel for the Lessee (who may be an employee of the Lessee or the Guarantor), addressed to the Lessor, in scope and substance satis-

factory to the Lessor and its counsel, to the effect set forth in clauses (a)(i), (ii), (iv), (v), (vi) and (vii) and confirming the accomplishment of the filings and the effect thereof recited in clause (viii);

(ii) the written opinion of counsel for the Guarantor (who may be an employee of the Guarantor), addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the Guarantor is a corporation legally incorporated and validly existing, in good standing under the laws of the jurisdiction of its incorporation with corporate power to enter into the Guaranty Agreement; and

B. the Guaranty Agreement has been duly authorized, executed and delivered to the Lessor by the Guarantor and constitute the legal, valid and binding agreement of the Guarantor, enforceable in accordance with its terms.

(iii) a certificate of the superintendent of mechanical maintenance of the Lessee as to his opinion that each Unit then delivered has a useful economic life of at least 20 years and an anticipated residual value at the end of 15 years of at least 20% of the Purchase Price thereof;

(iv) the written opinion of counsel for the Builder, addressed to the Lessor and the Lessee, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

B. the Purchase Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms;

C. the Acknowledgment of Notice of Assignment attached to the Assignment has been duly

authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder; and

D. At the time of inspection of the Units under the Purchase Agreement, such Builder had legal title to such Units and good and lawful right to sell such Units and title to such Units was free from all claims, liens, security interests and other encumbrances (other than those created by the Purchase Agreement and Assignment and other than the rights of the Lessor and the Lessee under the Lease and any such claims, liens, security interests and other encumbrances otherwise arising from any acts or omissions of the Lessor or the Lessee); the bill or bills of sale from the Builder transferring all of its right, title and interest in and to such Units have been duly authorized, executed and delivered by the Builder and are valid and effective to transfer all right, title and interest of the Builder in and to such Units, free of all claims, liens, security interests and encumbrances of any nature of, or arising from, through or under, the Builder, except those created by the Purchase Agreement and Assignment; and

(v) the written opinion of counsel for the Lessor (who may be an employee of the Lessor), addressed to the Lessee, to the effect that:

A. the Lessor is a corporation legally incorporated and validly existing, in good standing under the laws of the jurisdiction of its incorporation with corporate power to enter into this Lease; and

B. this Lease and the Assignment have been duly authorized, executed and delivered by the Lessor and constitute the legal, valid and binding agreements of the Lessor, enforceable in accordance with their respective terms.

In giving the opinions specified in subparagraphs (b)(i), (ii), (iv) and (v) of this § 15, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforce-

ability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally.

§ 16. Recording. The Lessee, at its own expense, will cause this Lease, the Purchase Agreement and the Assignment to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction, of the Lessor's interest in the Units, or for the purpose of carrying out the intention of this Lease; and the Lessee will promptly furnish to the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. Federal Income Taxes. The Lessor, as the owner of the Units, shall be entitled to such deductions, credits (other than the investment credit provided by Section 38 and related sections of the Code (as hereinafter defined)) and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the "Code"), to an owner of property, including, without limitation, the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code (hereinafter called the "ADR Deduction"), (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 72-10, 1972-1 C.B. 721, for property in Asset Guideline Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in Section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining-balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum of the years-digits method of depreciation when most beneficial to the Lessor, (c) including in the basis of the Units the entire Purchase Price thereof and all other items properly includable under Section 1012 of the Code and (d) taking into account a zero salvage value.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Lessor, and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. The Lessee agrees to provide to the Lessor promptly upon its request such information as will enable the Lessor to determine whether it is entitled (A) to the full benefit of the ADR Deduction and (B) to treat amounts includable in gross income with respect to this Lease as income from sources within the United States.

The Lessee represents and warrants that at the time the Lessor becomes the owner of the Units the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with the Lessor and that all items includable in gross income by the Lessor with respect to this Lease are entitled to treatment as income from sources within the United States.

If (A) for any reason whatsoever (other than for the reasons set forth below) all or any part of the ADR Deduction with respect to any Unit shall be unavailable in computing each of the items of income, gain, loss, deduction or credit of the Lessor, or (B) the Lessor shall not be entitled to treat all amounts includable in gross income with respect to this Lease as income from sources within the United States for any taxable year (or portion thereof) during which this Lease is in effect as the result of the location of any Unit outside the United States, then the rental applicable to such Unit set forth in Section 3 shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased by such amount as shall be required, in the reasonable opinion of the Lessor, to (y) repay on such next succeeding rental payment date an amount equal to all interest and penalties payable by the Lessor due to the loss of the ADR Deduction and (z) cause the Lessor's net after-tax annual cash flow and net after-tax annual rate of return to be the same (computed in accordance with the assumptions utilized by the Lessor in estimating its net return upon entering into this Lease, as such assumptions are set forth in § 17 hereof) as such net after-tax annual

cash flow and net after-tax annual rate of return would have been had the ADR Deduction been wholly available and had the Lessor been entitled to treat all amounts includable in gross income with respect to this Lease as income from sources within the United States; provided, however, that such rental shall not be so increased to the extent that the ADR Deduction is unavailable as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence described in § 7 with respect to such Unit if the Lessee shall have paid to the Lessor the amounts stipulated pursuant to § 7;

(ii) a voluntary transfer by the Lessor of legal title to such Unit, a voluntary disposition by the Lessor of any interest in such Unit or a voluntary reduction by the Lessor of its interest in the rentals from such Unit under the Lease unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Lessor to claim the ADR Deduction on its income tax return for the appropriate year unless (a) the Lessor shall have received a written opinion of its outside tax counsel, copies of which shall be supplied to the Lessee and to Group Counsel, Continental Can Company, Inc., at the appropriate addresses set forth in § 20, not later than eleven days prior to the filing of such return, to the effect that there is no reasonable basis in law for the Lessor to claim the ADR Deduction, and (b) such opinion shall not be considered unreasonable by Lessee's outside tax counsel (Lessee's outside tax counsel shall, in any case, inform the Lessor of its determination not later than ten days after the Lessee shall have received a copy of such opinion);

(iv) the failure of the Lessor to have sufficient income to benefit from the ADR Deduction; or

(v) an amendment to the Code to the extent that such amendment shall have a retroactive effect.

In the event and to the extent that the cost of any improvement and/or addition (hereinafter called Capital Expenditures) to a Unit made by the Lessee, under and pursuant to the terms of this Lease or otherwise, is required to be included in the gross income of the Lessor for Federal income tax purposes at any time prior to the time such Unit is dis-

posed of in a taxable transaction, then the rentals for the Units set forth in § 3 hereof shall, on the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to the Lessor pursuant to the last paragraph of this subsection (b) after said inclusion in the Lessor's gross income is required, be increased to such amount or amounts as shall, in the reasonable opinion of the Lessor, after taking into account any present or future tax benefits that the Lessor reasonably anticipates it will derive from its additional investment in the Units by reason of said inclusion (including without limitation any current deductions, future depreciation deductions and investment tax credit), cause the Lessor's net return to equal the net return that would have been realized by the Lessor if the cost of such Capital Expenditures had not been includible in the Lessor's gross income.

In determining the present or future tax benefits to be taken into account by the Lessor in establishing the rental increase required hereby, the Lessor shall attempt to maximize such benefits and hence minimize the increase in rents by making such elections (including where advantageous the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conventions and accounting methods as will further such objectives; provided, however, that the Lessor shall not be required to make any election or utilize a particular convention or accounting method if the Lessor determines, in its sole discretion but in good faith, that in so doing it will adversely affect its Federal income tax liability determined without regard to this transaction.

For purposes of this subsection the cost of Capital Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Lessor for Federal income tax purposes" if such inclusion is required by (i) any private ruling letter issued to the Lessor by the Internal Revenue Service that has not been revoked or otherwise rendered inapplicable at the time the cost of said Capital Expenditures is incurred; (ii) any provision of the Code or the applicable regulations thereunder; or (iii) any published revenue ruling of the Internal Revenue Service which has not been held invalid by a court having ultimate appellate jurisdiction over the Federal income tax liability of the Lessor.

As a condition of any increase in rentals pursuant to this subsection, the Lessor will, upon the written request

and at the sole expense of the Lessee (A) seek a modification of any private ruling letter described in (i) of the preceding paragraph to eliminate the requirement that the cost of Capital Expenditures be included in the Lessor's gross income and (B) contest the inclusion of the cost of Capital Expenditures in its gross income if such inclusion is required pursuant to the preceding paragraph in such forum as it, in its sole judgment but with due regard to the Lessee's advice, shall select; provided, however, that the Lessor shall not be required to contest such inclusion unless it has received an opinion from independent counsel selected by the Lessee and acceptable to the Lessor that there is a reasonable basis for contesting such inclusion and the Lessee has advanced to the Lessor such sums as the Lessor may reasonably deem necessary to pay the costs of such contest.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Lessor gives the Lessee written notice that the Lessor's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Capital Expenditures which are required to be included in the gross income of the Lessor for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor describing such Capital Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

For purposes of this § 17, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

The recomputation of the rental payable by the Lessee pursuant to this § 17 shall be based (i) on the same assumptions used by the Lessor in originally evaluating this transaction, including the assumptions that any taxable income generated by this transaction is subject to tax at an effective rate of 51.9 percent, that the Lessor is an accrual basis taxpayer, that in claiming the ADR Deduction the Lessor has utilized the half-year convention as provided in Regulation 1.167(a)-11(c)(2)(iii), and that any net loss generated by this transaction is a tax benefit against taxes imposed at an effective rate of 48.0 percent, and (ii) in determining the extent to which the Lessor received credit for any foreign



tax against its federal income tax liability, on the further assumption that credit is received for all other foreign taxes claimed as credits for the taxable year in question before credit is received for any foreign taxes indemnified under this Lease which are claimed as credits for such year.

In the event that the Lessee shall pay all or any portion of any instalment of rental prior to the date upon which such payment is herein required to be made, the Lessee shall pay to the Lessor an amount which, after deduction of all taxes and other charges in respect of the receipt of such amount under the laws of any federal, state or local governmental or taxing authority in the United States or under the laws of any foreign country or subdivision of any taxing authority thereof, shall be equal to the excess of (A) the taxes and other charges payable by the Lessor as a result of the receipt of such instalment of rental over (B) the taxes and other charges that would have been payable by the Lessor had such instalment of rent been paid by the Lessee on the date upon which such payment is herein required to be made.

In the event the rental rates shall be adjusted as hereinbefore provided, the Casualty Values set forth in § 7 hereof shall be adjusted accordingly.

The Lessee's agreement to pay any sums that may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

§ 18. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 12% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. Quiet Enjoyment and Miscellaneous. Notwithstanding the disclaimers contained in § 9 hereof, the Lessor covenants that if, and so long as, the Lessee keeps and performs each and every covenant, condition and agreement to be performed or observed by it hereunder, the Lessee shall quietly enjoy the Units leased hereunder without hindrance or molestation by the Lessor or any other person lawfully claiming the same by, through or under the Lessor.

On or before the Closing Date with respect to a Unit, the Lessor will cause to be executed and delivered such instruments as are requested by the Lessee to evidence the election to pass to the Lessee such investment credit as may be available with respect to the Units pursuant to Section 38 and related sections of the Code. The Lessor has not made and shall not be deemed to have made any warranty or representation as to the validity or effectiveness of such election. Notwithstanding the provisions of §§ 1 and 4 hereof, the Lessee shall have the option to terminate this Lease with respect to any Unit upon written notice to the Lessor in the event that the Lessee shall be actually deprived of the use of such Unit for a period of more than 60 days by reason of liens, encumbrances or rights or others with respect to such Unit arising solely out of actions by the Lessor.

§ 20. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class certified, addressed as follows:

(a) if to the Lessor, at 45 Cardinal Drive, Westfield, New Jersey 07092, Attention of Grover Connell, President, and

(b) if to the Lessee, at P. O. Drawer 550, Hodge, Louisiana 71247, Attention of Auditor, with a copy to Group Counsel, Continental Can Company Inc., Forest Products, Office Park II, Greenwich, Connecticut 06830,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 21. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or

conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

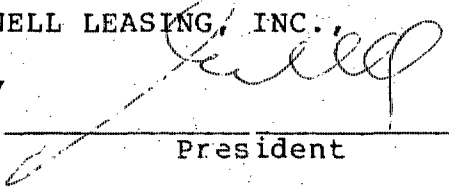
§ 22. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CONNELL LEASING, INC.

by

  
\_\_\_\_\_  
President

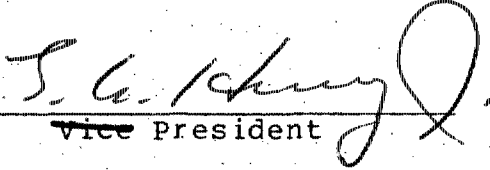
[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Secretary

NORTH LOUISIANA & GULF RAILROAD  
COMPANY,

by

  
\_\_\_\_\_  
Vice President

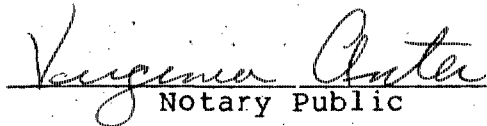
[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Assistant Secretary

STATE OF NEW JERSEY, )  
 ) ss.:  
COUNTY OF UNION, )

On this 19<sup>th</sup> day of December 1975, before me personally appeared Grover Connell, to me personally known, who, being by me duly sworn, says that he is the President of CONNELL LEASING, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

[Notarial Seal]

My Commission Expires:

VIRGINIA ANTER  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires April 22, 1979

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF FAIRFIELD, )

On this 19<sup>TH</sup> day of ~~December~~ 1975, before me personally appeared E. A. HENRY JR., to me personally known, who, being by me duly sworn, says that he is a Vice President of NORTH LOUISIANA & GULF RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Florence V. Wojcik  
Notary Public

[Notarial Seal]

My Commission Expires: APRIL 1<sup>ST</sup> 1978

# SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Place of Delivery</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>
MP 15 HP 1500 Locomotive	4	Hodge, Louisiana	42-45	\$297,728	\$1,190,912